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5
6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,

Case No. 3:18-cr-00066-HDM-WGC

9 v.

Plaintiff,

10 ORDER

11 JAMES JIMMY EVANS SR.,

12 Defendant.

13 Defendant James Jimmy Evans Sr. has filed a motion for
14 compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). (ECF
15 No. 102). The government has opposed (ECF No. 107), and Evans has
16 replied (ECF No. 108).

17 On August 8, 2018, Evans was charged by way of indictment
18 with three counts of possession with intent to distribute
19 methamphetamine, one count of possession with intent to distribute
20 heroin, one count of possession of a firearm in furtherance of a
21 drug trafficking crime, three counts of possession of a firearm by
22 a prohibited person, and two counts of possession of a stolen
23 firearm. (ECF No. 1). On September 11, 2019, Evans entered into a
24 binding plea agreement in which he agreed to plead guilty to Count
25 One of the indictment, charging possession with intent to
26 distribute at least 500 grams of methamphetamine, and the parties
27 agreed to a sentence of 150 months. (ECF No. 46). On December 17,
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1 2019, the court accepted the binding nature of the plea agreement
 2 and sentenced Evans to a term of 150 months and five years of
 3 supervised release to follow. (ECF Nos. 72 & 74).

4 Evans, who has served about 25 months of his 150-month
 5 sentence, and who has a current projected release date of March
 6 30, 2029,¹ now seeks compassionate release.

7 **Standard**

8 18 U.S.C. § 3582(c)(1)(A) provides in relevant part:

9 [T]he court, . . . upon motion of the defendant after
 10 the defendant has fully exhausted all administrative
 11 rights to appeal a failure of the Bureau of Prisons to
 12 bring a motion on the defendant's behalf or the lapse of
 13 30 days from the receipt of such a request by the warden
 14 of the defendant's facility, whichever is earlier, may
 15 reduce the term of imprisonment (and may impose a term
 16 of probation or supervised release with or without
 17 conditions that does not exceed the unserved portion of
 18 the original term of imprisonment), after considering
 19 the factors set forth in section 3553(a) to the extent
 20 that they are applicable, if it finds that--

21 (i) extraordinary and compelling reasons warrant such a
 22 reduction;

23 . . .

24 and that such a reduction is consistent with applicable
 25 policy statements issued by the Sentencing Commission.²

26 U.S.S.G. § 1B1.13 provides:

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 29 ¹ See <https://www.bop.gov/inmateloc/> (last accessed Sept. 14, 2020).

30 ² In addition to "extraordinary and compelling reasons," the court may
 31 grant a motion if "the defendant is at least 70 years of age, has served
 32 at least 30 years in prison, pursuant to a sentence imposed under section
 33 3559(c), for the offense or offenses for which the defendant is currently
 34 imprisoned, and a determination has been made by the Director of the
 35 Bureau of Prisons that the defendant is not a danger to the safety of
 36 any other person or the community, as provided under section 3142(g)." 37
 38 18 U.S.C. § 3582(c)(1)(A)(ii). Because Evans is not over 70 years of age
 39 and has not served more than thirty years in prison, this provision does
 40 not apply.

1 Upon motion of the Director of the Bureau of Prisons
2 under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a
3 term of imprisonment (and may impose a term of supervised
4 release with or without conditions that does not exceed
5 the unserved portion of the original term of
6 imprisonment) if, after considering the factors set
7 forth in 18 U.S.C. § 3553(a), to the extent that they
8 are applicable, the court determines that-

9 (1)(A) extraordinary and compelling reasons warrant
10 the reduction;

11 . . .

12 (2) the defendant is not a danger to the safety of
13 any other person or to the community, as provided in 18
14 U.S.C. § 3142(g); and

15 (3) the reduction is consistent with this policy
16 statement.

17 U.S.S.G. § 1B1.13.

18 Even if there are extraordinary and compelling reasons, an
19 inmate may be granted compassionate release only if he is not a
20 danger to any other person or to the community, as provided in 18
21 U.S.C. § 3142(g). *United States v. Johnson*, 2020 WL 2114357, at *1
22 (E.D. Wash. May 4, 2020) ("[T]he Court should not grant a sentence
23 reduction if the defendant poses a risk of danger to the community,
24 as defined in the Bail Reform Act.").

25 The defendant is not entitled to be present for a hearing on
26 a motion for compassionate release. See Fed. R. Crim. P. 43(b)(4).

27 **Analysis**

28 Evans argues that there exist extraordinary and compelling
29 reasons for his release because his underlying health conditions
30 put him at an increased risk of COVID-19 complications.
31 Specifically, Mr. Evans is 64 years old and suffers hypertension
32 and obesity. Evans argues that although he has already contracted
33 COVID-19 while incarcerated, he still experiences symptoms and

1 faces a risk of more severe complications if he were to contract
2 COVID-19 again.

3 The government opposes, arguing first that Evans did not
4 exhaust his institutional remedies before filing the motion.
5 Second, while conceding that Evans is at a greater risk of COVID-
6 19 complications due to his obesity, the government asserts that
7 a reduction of sentence is nevertheless inappropriate when
8 considering, as the court must, the factors under 18 U.S.C. §
9 3553(a).

10 **A. Exhaustion**

11 Before a defendant may file a § 3582(c)(1)(A) motion, he must
12 ask the warden of his institution to file a motion for
13 compassionate release on his behalf and either (1) exhaust any
14 administrative appeals of the warden's refusal to bring a motion
15 or (2) wait thirty days from the warden's receipt of the request,
16 whichever is earlier.

17 Evans' counsel submitted a request for compassionate release
18 on June 3, 2020.³ (ECF No. 108-1). More than thirty days have
19 elapsed from the warden's receipt of this request. Evans' motion
20 is therefore exhausted.

21 **B. Extraordinary and Compelling Reasons**

22 Section 1B1.13 sets forth specific examples of "extraordinary
23 and compelling reasons," including in relevant part that the
24 defendant is "suffering from a serious physical or medical
25 condition . . . that substantially diminishes the ability of the
26 defendant to provide self-care within the environment of a

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³ Evidence of exhaustion was not attached to the motion but instead was attached to the reply due to a filing error.

1 correctional facility and from which he or she is not expected to
2 recover." U.S.S.G. § 1B1.13 app. n.(1)(A)(ii)(I). There is also a
3 catch-all provision, which provides: "As determined by the
4 Director of the Bureau of Prisons, there exists in the defendant's
5 case an extraordinary and compelling reason other than, or in
6 combination with, the reasons described in subdivisions (A)
7 through (C)." *Id.* app. n.(1)(D).

8 Evans' underlying health conditions put him at a higher risk
9 of COVID-19 complications under Centers for Disease Control and
10 Prevention ("CDC") guidance. In fact, the government concedes that
11 Evans' obesity put him at higher risk of complications. However,
12 Evans has already contracted COVID-19, and his symptoms were so
13 mild as to be classified as asymptomatic. The CDC indicates there
14 is limited information about reinfection with COVID-19. See
15 [https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-](https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html)
16 [isolation.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html) (last accessed Sept. 14, 2020). Nevertheless, BOP
17 statistics indicate that all or virtually all the inmates that
18 were infected at FCI Lompoc have recovered and that there are just
19 two active infections in the facility. See
20 <https://www.bop.gov/coronavirus/> (last accessed Sept. 14, 2020)
21 (current data showing no active infections among inmates and two
22 active infections among staff). There is further no evidence to
23 support Evans' argument that a second bout of COVID-19 could be
24 more severe than the first. For this reason, the court is not
25 persuaded that extraordinary and compelling reasons exist for
26 Evans' release. However, even if extraordinary and compelling
27 reasons did exist, reduction of Evans' sentence is not justified
28 in light of the applicable 18 U.S.C. § 3553(a) factors.

1 **C. 18 U.S.C. § 3553(a) Factors**

2 Both the nature and circumstances of the offense in this case
3 and the history and characteristics of the defendant weigh against
4 shortening Evans' sentence any further. The offense conduct
5 involved both controlled substances and firearms, some of them
6 stolen. Before committing the offense conduct, Evans had a
7 substantial criminal history. Further, a sentence of 150 months,
8 which is significantly below the applicable Guidelines range, is
9 necessary to reflect the seriousness of the offense, promote
10 respect for the law and provide just punishment for the offense,
11 to afford adequate deterrence to criminal conduct, to protect the
12 public from further crimes of the defendant, and to avoid
13 unwarranted sentence disparities. The fact that Evans has served
14 less than a quarter of his sentence weighs heavily against
15 authorizing his release. Accordingly, the court concludes that a
16 reduction in sentence is not appropriate.

17 **Conclusion**

18 In accordance with the foregoing, Evans's motion for
19 compassionate release (ECF No. 102) is hereby DENIED.

20 IT IS SO ORDERED.

21 DATED: This 14th day of September, 2020.

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24 UNITED STATES DISTRICT JUDGE
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